Check for updates

JOHN B. HAVILAND

Ideologies of Language: Some Reflections on Language and U.S. Law

ABSTRACT I present two U.S. court cases in which I participated as a linguistic anthropological "expert" to show how language ideologies of the law both influence legal outcomes and conflict with "scientific" ideas about language. One case was the murder trial of a young Mixtec-speaking Indian from Oaxaca; the other was a civil suit brought by four Hispanic women dismissed from an elder-care center for speaking Spanish on the job. I identify in the linguistic ideologies of both cases a principle of "referential transparency" that takes the essential business of words, regardless of the linguistic code, to be communicating propositional information. In the second case, I describe a further notion of "linguistic paranoia" in which speaking a language other than English is taken as inherently insulting or threatening. I relate these implicit ideological threads to the legal outcomes, to the restricted notions of potential "language rights" that might emerge from such ideologies, and to the clash between theoretical and judicial perspectives on language. [Keywords: U.S. law, language rights, linguistic ideology, expert witnesses, linguistic anthropology]

ALESSANDRO DURANTI (2001) identified several historical "paradigm shifts" within linguistic anthropology. One shift he mentions laterally is the recent attention paid to linguistic ideologies, which are roughly glossed as "shared bodies of commonsense notions about the nature of language in the world" (Rumsey 1990:346), or more specifically identified as "the ideas with which participants and observers frame their understanding of linguistic varieties and map those understandings onto people, events, and activities that are significant to them" (Irvine and Gal 2000:35). It is understandable, of course, that those of us who study language, if only as part of our ethnographic curiosity, should be interested in what ideas the people we work with (and, indeed, we ourselves) have regarding what language is or what language is good for. If Judith Irvine and Susan Gal (2000) are right, though, insofar as ideas about language rub off onto ideas about people, groups, events, and activities, we may find that linguistic ideologies pervade the very stuff of anthropology: social life and its comparative organization. In particular, ideas about language will be part of the cultural raw material we face when we embark, as some of us have, on a kind of anthropological or linguistic activism as advocates for speakers as groups or individuals.

I present here a series of vignettes, based on some of my own excursions into practical linguistic ideology, to show just how different and divergent ideas about language can be across disciplines, across societies, and, in this case, across institutions within a society. By presenting two court cases in which I have participated as an anthropological linguistic "expert," I also hope to show, first, how institutions like the U.S. judicial system build specific practices around both theoretical and folk language ideologies, and, second, how particular notions of "language rights" might grow out of such ideological construction.

Linguistic anthropologists have raised theoretical issues and voiced practical concerns about "language rights" in a wide range of contexts. Recent interest in the very notion of a "linguistic ideology"—ideas about language and its place in social arrangements or its use and usability for social and political ends, of which the concept of "language rights" must surely be a part and a product—illustrates the theoretical end of this spectrum. Campaigns that many of us have studied or in which we have participated regarding bilingual education, rights to translators in the courtroom, minority language literacy, or linguistic oppression and extermination, to mention only a few possibilities, illustrate the practical end. Like all ideological products, the idea that "languages" (whose integrity and individuality must be constructed, along with the related concept of "communities of speakers") can have "rights" (which, in turn, must be in principle threatened or at least contestable) at all must be historically grounded, and subject to institutional reproduction and modification. Moreover, even casual observation will demonstrate a standard

 COPYRIGHT © 2003, AMERICAN ANTHROPOLOGICAL ASSOCIATION

anthropological truism: Ideologies of language are not everywhere the same, nor, indeed, are they commensurably identifiable in all societies at all times. The rampant and unremarkable (because natively unremarked on) polyglotism of, for example, much of Aboriginal Australia, the Vaupés region of Colombia, or even modern European corporate life—where every human being routinely "speaks" several languages and uses different linguistic varieties as part of a delicate calculus of social etiquette—gives rise to one set of ideologies. The insistent and, indeed, legislated monoglot standard of, for example, the U.S. judicial system from which I shall draw the examples in this article, spawns a very different set of ideological principles about what counts as "language" in the first place, how linguistic varieties are conceived to be interrelated, and who is entitled or obligated to use what varieties in what circumstances. So, too, will different kinds of "rights" to language respond to different sociocultural formations when the notion of "right" is available or applicable at all.

My aim in this article is to consider theories of language embodied in a central institution of power, the U.S. judicial system. Drawing most directly on my own experiences as an "expert witness" in various criminal and civil cases—a capacity whose qualifications I met (at least in theory) because of my fieldwork with Mexican Indians and Spanish-speaking immigrants in the United States—I will locate in the practices of the courtroom some of the mechanisms by which ideologies of language and language "rights" are generated, questioned, and either bestowed or withheld via the institutions of the law. Engaging the legal system in my own society in this way provided me a serendipitous and, at the time, unexpected education. Despite a general consciousness that the U.S. judicial system systematically and multifariously mistreats disadvantaged minorities, I might nonetheless have naively assumed before my expert witness work that the right of U.S. residents to speak "their own" languages received at least some protection via civil rights legislation, or that, in the country's police stations and courts, translation might routinely be provided during interrogations and trials involving nonspeakers of English. Discovering how wrong I was resulted from the application of ethnography and a kind of ethnomethodological distance, the traditional tool of anthropological discovery, to the legal institutions that employed me as expert.

The questions I want to ask and urge colleagues and students to ask are questions of modern linguistic anthropology. What theory of language is at play in particular circumstances? What consequences (theoretical and practical) does the theory have for speakers, for institutions and other social arrangements, and for society? How do claims for language rights or obligations derive from the theory? And is it a good theory in the first place?

Consider the evolving "linguistic ideologies" of anthropology itself. Duranti (2001) identified first a descriptive, Boasian paradigm. Here the emphasis is on the structural and conceptual diversity of languages understood as codes—elaborately structured devices for "representing" different physical, social, and cultural "realities"—and, hence, potential vehicles for expressing and reproducing conceptual differences among groups of speakers. Duranti went on to identify an expanded view of "speaking as cultural activity" with its own distinct kinds of organization, and, thus, with indissoluble links to other sorts of organization to which anthropology must attend. There is still a linguistic code here, but it exists in the service of action, of doing what gets done, in part or in whole, by talking. He further identified a linguistic anthropology that concentrates on the role of language in establishing and altering contexts, that is, establishing the very ground on which action occurs. Here language is a resource not only for doing things but also for setting the parameters on what can or is to be done, for setting up occasions, for creating the spaces that actors can occupy, and so on. The study of language ideologies grows out of a widened perspective on language, one that is emancipated from the notion of codes or repertoires of "speech acts" and expanded to include precisely those links or homologies between ideas about words, ways of speaking, and varieties of talk, and their projections onto people, groups, events, and activities that Irvine and Gal's definition, quoted earlier, suggests.

It is worth detouring quickly through the contrasting ideologies of language in linguistics proper, if only because of the hegemony of that discipline in Western science. Mainstream research in "theoretical linguistics" construes language very narrowly as (with heavy caricature):

A. A genetically endowed human faculty for manipulating intercommunicating structural modules (sound, meaning, hierarchical syntactic structure) of the human language faculty;

B. A species-specific expression of certain cognitive capacities (possibly variably expressed in one language or another, but where Language as a human phenomenon instantiates a substantially shared cognitive repertoire;

C. A functionally driven construction kit for certain (largely shared) communicative ends.

Note how these views of language retreat into the familiar "mind–brain" formulation of language, cutting the links with social life that Duranti found to be the hallmarks of linguistic anthropology.

Note, too, how these views of language—which may be ideologies, albeit "scientific" ones—give rise to a specific view of what "language rights" might be. For example, "salvage linguistics" and efforts to promote the documentation of "endangered languages" are peculiarly consistent with such approaches, as each specific linguistic code variety is taken as the analogue of a biological species, whose overarching genus is the central object of interest, but for which a taxonomic entry ought to be prepared just in case it might provide interesting data when the taxon itself has been rubbed out.

15481433, 2003, 4, Downloaded from https://anthrosource.onlinelibrary.wiley.com/doi/10.1525/aa.2003.105.4.764 by Stanford University, Wiley Online Library on [01/12/2024]. See the Terms and Conditions (https://onlinelibrary.wiley.com/terms-and-conditions) on Wiley Online Library for rules of use; OA articles are governed by the applicable Creative Commons License

We might contrast the sorts of ("scientific") linguistic ideologies that grow out of anthropological perspectives on language and speech. One such perspective is that of Michael Silverstein, who writes:

> The total linguistic fact, the datum for a science of language, is irreducibly dialectic in nature. It is an unstable mutual interaction of meaningful sign forms contextualized to situations of interested human use, mediated by the fact of cultural ideology. [1985:220]

Silverstein articulates three interacting perspectives on language that figure in this characterization: (1) a structural perspective (roughly, a grammar of form); (2) a pragmatic perspective on the "appropriate" and "effective" uses of linguistic forms; and (3) an ideological perspective about "language use as a means to an end in interaction" (1985:222).[1] This tripartite structure shows how an adequate study of language must go beyond syntax, beyond "meanings" or "uses" of expressions, and also beyond the ethnotheories of language formulated by "natives" (including ourselves).

A much discussed issue, in which such ideas have been usefully brought to bear, is the question of "standard language," materialized in the United States (and legislated in such states as California and Florida) in the "English only" movement. Such a movement can only flourish as part of a (political) process whose progeny include: (1) a privileged notion of referential function (valorized as "clear" speech) for language; (2) an idea of social, expressive, and logical transparency attached to, for example, "Standard English," which can be "standard" only because it is conceived of as completely unmarked, that is, functionally neutral; and (3) a political ideology in which linguistic tools, like hammers or pliers, can be picked up, without undue effort,[2] by all responsible citizens.[3] Here all three perspectives on language are brought into line with a single, overarching—though drastically limited—theory of what language is and how it works.

The same view, or, perhaps, a close cousin, I believe, informs the practices of the criminal courtroom, a particularly dramatic arena for our society's exercise of power. What I have seen in the U.S. legal cases on which I have worked makes clear just how potent these three pillars of the linguistic ideology of the law are. Let me repeat them: First, the notion that words are essentially vehicles for conveying "referential meaning," that is, propositions that are simply true or false; second, the axiomatically assumed logical and social neutrality of the majority language, taken as a transparent vehicle for conveying such propositions; and, third, the detachability of this majority language from the social circumstances of its acquisition and deployment, and, thus, its conversion into a mere "tool" of propositional transmission, to be picked up as needed. As we shall see, these ideological components, in turn, link up with other ideas and attitudes to inform language policies and "rights" as enforced by the courts.

MURDER IN THE STRAWBERRY FIELDS

Here are the words of the prosecuting attorney in a murder trial that took place in Clackamas County, near Portland, Oregon, in the fall of 1986.[4] The defendant was Santiago V., a Mixtec-speaking Indian from central Oaxaca just about to turn 18.

> On July 13, 1986, Ramiro F. was murdered. He died sometime after 2 o'clock [AM], sometime before probably 2:45 or 3 o'clock. . . . [T]he medical examiner, examined the body of Ramiro Lopez F. and would find a wound to the heart; may have gone in as much as four inches. [*Clackamas Co. (Oregon) vs. Morales,* 757–758][5]

The scene here is a migrant labor camp near Portland, where over a hundred undocumented Mexicans had lived during most of the previous two months, picking strawberries on the adjacent farm. In this case, the bulk of the camp residents, including Ramiro F. and Santiago V., were Mixtecs from the state of Oaxaca. They came from one of the poorest regions of Mexico, a state whose population is so desperate that people have for decades migrated to other parts of Mexico, as well as to the United States, for work that will support them.

Earlier that night, in July 1986, there had been a birthday party for a young girl, and many of the camp residents attended. There was drinking, and, ultimately, brawling. In one fight, a Mixtec man from a certain home village in Oaxaca picked a fight with a Mixtec from another village, ending up with a bloody nose, and, finally, fleeing the camp in the company of a friend, Ramiro F. Cars sped from the camp into the strawberry fields. Later that night, neighbors heard shots and reported a car on fire in an adjacent field. Local police, who occasionally had been called to quiet disturbances in the camp, appeared to put out the fire and to take down the names of suspected miscreants. The police stopped and searched a vehicle that entered the camp after they arrived, finding a pistol and a few knives on the inebriated occupants, who were released to go to their respective cabins to sleep off the alcohol. As dawn neared, relatives of the disputant who had been involved in the fight the night before went to look for him. They found him cowering in the strawberry fields, having run from his car before it was torched. Not far away they found Ramiro's body, stabbed and cold. The police were summoned again, this time with a more serious crime on their hands. With the help of a camp foreman they rounded up several Mixtec men, all of whom—not coincidentally, since these were the people whose names the police knew—had been passengers in the car that had been stopped and searched the night before. These men were now trundled off in handcuffs to the sheriff's office, for questioning by a couple of quickly summoned Spanish-speaking police officers. By the end of a day of interrogation, the police had their suspects.

Here was the prosecution's theory of the case: The victim, Ramiro, was friend and ally of Margarito, the man who had caused trouble and ended up with a bloody nose at the birthday party. The man with whom Margarito had

15481433, 2003, 4, Downloaded from https://anthrosource.onlinelibrary.wiley.com/doi/10.1525/aa.2003.105.4.764 by Stanford University, Wiley Online Library on [01/12/2024]. See the Terms and Conditions (https://onlinelibrary.wiley.com/terms-and-conditions) on Wiley Online Library for rules of use; OA articles are governed by the applicable Creative Commons License

fought, one Alfonso Luna, was part of a group from San Miguel, a town in the Mixteca Baja (the lower part of the Mixtec region, in western Oaxaca state). After the fight, Ramiro and Margarito jumped into their car and drove off into the strawberry fields; however, they were chased by several other cars from the camp. One of them, a pickup truck, was driven by the aggrieved Alfonso Luna's brother, Miguel, along with a collection of other youths from San Miguel. Among these was Santiago V. They shortly found Margarito's car, abandoned in the strawberry fields. They crashed into the car several times with the pickup, then decided to ravage it, first firing shots to break open the windows—for which, Miguel, the driver of the pickup, used his pistol. Then they removed the beer they found inside, slashed the tires with a knife, stole the car's battery (which was later found in the back of the pickup), and, finally, set fire to the unfortunate vehicle by lighting some carburetor hoses. As the flames leapt up, they drove off in the direction of a neighboring camp where Miguel and the pickup truck's owner, riding in the passenger seat, lived. Virtually all of the pickup's occupants attested to this scenario independently under interrogation.

It was here, however, that discrepancies appeared. While most of the riders said that they went straight back to the other camp, changed vehicles, and then returned to the original camp where they were stopped by police and searched, two claimed that there was a further stop—after burning the car, but before leaving the strawberry fields. One witness, also a rider on the pickup truck and also from San Miguel, ultimately testified that they stopped the truck, and while Miguel held his gun to Ramiro, standing in the field, Santiago walked up to him and stabbed him twice, leaving him in a heap. From there the truck headed on to the other camp, as the others had described. Two other witnesses on the truck stated that it had made a stop after the car burning, and that Santiago had gone into the field; one of these witnesses, who was given immunity by the state for his admitted slashing of the tires, also testified that, later, in the camp, Santiago had passed him a knife and threatened him if he said anything about it.

The state's theory was simple: The group of people from San Miguel, led by Santiago and angered by the fight with Margarito, had followed the latter's car into the field, destroyed the car, and stabbed the hapless Ramiro, Margarito's defender. Then they had callously returned to camp (after having been frisked by the police) and gone calmly to sleep, where they were discovered by the police who returned at dawn after the cadaver was found.

The defense lawyers, on the other hand, claimed that there was evidence of several cars in the strawberry field that night; and that the lack of bloodstains indicated that Santiago could not have delivered the death blow with a knife. Moreover, they hinted that the "eyewitness" testimony was dubious. It was, they suggested, elicited by pressure and intimidation from a confused and frightened participant in the car burning, after heavy pressure from the district attorney and the police interrogators.

The state charged Santiago with murder; and they charged Miguel with having burned the car. Both men were convicted. Miguel served six months and then was deported to Mexico.[6] The other occupants of the pickup continued picking fruit or left for California. Santiago received a life sentence and went to prison near Salem, Oregon, in October 1986; shortly thereafter, he celebrated his 18th birthday behind bars.

THE MIXTEC MURDER TRIAL

The protagonists in the Clackamas County murder case were Mixtec Indians from Oaxaca. Their native language, one of several of the Oto-Manguean family, is divided into many dialects across the several states in Mexico where it is spoken. Competence in Spanish also varies widely from one village to another: In some places people no longer speak Mixtec, whereas in others, only a few people, mostly younger men, speak Spanish. Except for a couple of labor foremen (and the police), none of the protagonists in the events of that night in Oregon spoke English. Almost all spoke Mixtec, but their competence in Spanish, in nearly every case a second language, varied considerably. It is easy to appreciate that this linguistic profile presented a dilemma for the Oregon police in its investigations, as well as for the court during the trial. How the court, in particular, resolved these problems is a central aspect of official U.S. linguistic ideology.

One striking feature of the Court's theory of language is the notion of "referential transparency" that combines the first and second aspects of the political ideology that Silverstein identifies as prerequisites for the notion of a monoglot standard. Under such a view, the only thing taken to matter in contrasting one "language" with another is "meaning"—which is often reduced to what "words refer to" or what propositions they putatively express. We could also call this the "Verbatim theory," or the assumption that expressions in one language can be unproblematically rendered into propositions and translated "verbatim" into another. Much is made, by both sides in Santiago's case and by the court itself, of issues of "translation" regarding the testimony of witnesses, the results of interrogation, the documents introduced into evidence, and the proceedings themselves, which were rendered back into words that the defendant could understand. Where translation was involved in other phases of the investigation of the crime, which in turn enter into evidence (as in the ritual of "reading" the accused and other witnesses "their [Miranda] rights"), it also becomes the object of explicit scrutiny, subject to the testimony of both eyewitnesses and experts. Translation is, in fact, ultimately subject to the rule of law itself. Statutes stipulate what constitutes authoritative translation, when it is to be provided, to whom, by whom, and so forth. In the last instance, when there is a dispute between parties about an "authoritative translation," the jury may simply be asked to exercise its judgment about which "expert" to believe.

15481433, 2003, 4, Downloaded from https://anthrosource.onlinelibrary.wiley.com/doi/10.1525/aa.2003.105.4.764 by Stanford University, Wiley Online Library on [01/12/2024]. See the Terms and Conditions (https://onlinelibrary.wiley.com/terms-and-conditions) on Wiley Online Library for rules of use; OA articles are governed by the applicable Creative Commons License

Three distinct languages are floating around Santiago V.'s murder trial; yet only one, English, has official status in the courtroom. Obviously, judge and lawyers are themselves English speakers. Less obviously (since, at least in theory, a defendant is to be judged by a group of his or her peers) the jury also consists of English-speaking Oregonians. In important ways this English monoglotism is legislated and reinforced, both by the default mechanisms of the court such as jury selection procedures and by explicit ideological pronouncements. Consider, for example, the instructions issued by the judge to prospective jurors, prior to beginning the selection process. First the judge notes that certain officially designated interpreters will "assist" those participants in the trial who do not "speak the English language."

> This particular case . . . will involve the use of interpreters as the defendant in this case is unable to speak the English language and will be, throughout the course of trial, assisted by his interpreter. . . . In addition there will be a court interpreter that will be present whenever anyone testifies who is not fluent in the English language. [*Clackamas County (Oregon) vs. Morales*, 692]

The exclusion of languages other than English is enforced directly on the official trial transcript, which appears only in English translation. Evidently, no tape recordings of the original testimony were made, and the official record of non-English testimony consists exclusively of the stenographer's rendering of the interpreter's words.

No mention is made of the fact that the defendant and most of the witnesses are not fully competent, or at least have not been demonstrated to be competent, in the language of the interpreter, Spanish; or that their native competence is in the unrelated Oto-Manguean language Mixtec. Indeed, rather little is said throughout the trial about the nature of what appears in the record as the "Mestica" language. For the purposes of this trial, the court simply ignores the existence of Mixtec, and somewhat reluctantly makes allowances only for Spanish, even in the face of obvious and repeated problems.

Judge: Would you translate what he said, please?
Interpreter: That was Mestican, I don't understand.
J: You have to tell us what he says.
I: It was Mestica words.
J: Very well.
District Attorney: I would ask Ms. R.[7] to tell us whether she knows what those Mestica words are?
I: No, I don't. [*Clackamas County (Oregon) vs. Morales*, 1153][8]

Returning to the jury selection procedure, the judge goes on to explain one of the criteria to be used about which prospective jurors have been polled.

> One of the questions in the questionnaire that the lawyers are interested in, those of you who are fluent in the Spanish language and you're able to understand Spanish sufficiently to understand the English translation of the words spoken from Spanish in the courtroom, keep in mind . . . the translation of the Spanish language that you must rely on in the course of this case is that translation that is made by the court interpreter that will be translating the language as it's spoken from the witness stand. And that is the translation that you rely on for your evidence. I don't know whether any of you, as I say, understand Spanish, but we don't want to get into a situation where we have some juror in the jury room saying, "Well, that's not what the witness really said, you know." We can't do that. You're bound to accept the testimony as translated by the official court translator, and that is one of the reasons the question is in the questionnaire about your ability to understand the Spanish language. [*Clackamas County (Oregon) vs. Morales*, 693]

The judge's admonition displays, in both the practice and the official theory of language in the courtroom, precisely the notion of "referential transparency." The testimony "as it is spoken from the witness stand" can be rendered for legal purposes, without loss and exactly—that is, "verbatim"—into equivalent and officially sanctioned English words. This is the job of the interpreter, who is thus conceptualized as a kind of transparent filter through which referential meanings pass from an opaque source language into the official target language. By fiat, the filter's output must be taken as propositionally identical to its input, which is, by definition, uninterpretable, or, perhaps, better, encrypted, as far as the trial process is concerned. This theory makes a certain sense in the context of the criminal trial, in which it is the jury's job to arrive at the "truth" of the matter—that is, to render judgment about the truth of the propositional substrate behind the words spoken in testimony.

The "verbatim" theory is displayed even more plainly in the judge's instructions to the interpreter herself, as he asks her to swear to "make a true translation of all statements in Spanish to English" (*Clackamas County [Oregon] vs. Morales*, 1036).

> We're going to have a series of witnesses who do not speak English, obviously, and I'm asking [the translator] to translate the questions that are asked these people verbatim . . . word for word. And then translate the responses of the witnesses verbatim, word for word. In other words, I don't want you to say, "Well, the witness says," forget that part. Just translate it verbatim, word for word. [*Clackamas County (Oregon) vs. Morales*, 1036–1037]

The notions of "word for word" and "literal" translation reappear at crucial points in the trial but are rarely questioned as in any way problematic.

The judge's instructions also clearly address a problem of voicing that shows how the underlying theory of language here interpenetrates with a broader notion of personal identity, self-presentation, and truth. The judge instructs the interpreter not to frame her translations as translations: neither as paraphrases of what a witness says, nor even as emitting from another mouth but, rather, directly, "word for word" without pronominal transposition. There is here an interesting corollary to the "verbatim theory," which we might call "propositional detachability." It is as if the truth-functional core of what someone says can be decoupled from the actual saying itself: The content of the words is rendered into English and lifted out of the speaker's mouth to be deposited, normalized, onto the clean sheet of testimony via the translator. The jury members,

15481433, 2003, 4, Downloaded from https://anthrosource.onlinelibrary.wiley.com/doi/10.1525/aa.2003.105.4.764 by Stanford University, Wiley Online Library on [01/12/2024]. See the Terms and Conditions (https://onlinelibrary.wiley.com/terms-and-conditions) on Wiley Online Library for rules of use; OA articles are governed by the applicable Creative Commons License

presumably, are to use their own judgment by overlaying the translator's words onto the original speaker's voice and demeanor to arrive at their conclusions about truth.

The prosecution produced an eyewitness who testified to seeing Santiago stab the victim. Unfortunately for the state's case, this witness displayed considerable confusion about the events of that night; and, moreover, his Spanish was extremely limited. Questions were raised about what, exactly, the witness saw, and how he would describe what he saw. His original eyewitness testimony appears in the transcript as follows:

District Attorney: I'm going to show you Exhibit 79. What is that a picture of?
Witness: It's of a person.
DA: Did you see that dead person?
W: Yes.
DA: When did you see him?
W: (Pause). When he was stabbed.
DA: Who stabbed him?
W: Santiago. Well, Santiago. [*Clackamas County (Oregon) vs. Morales*, 1076]

When questions were raised about the reliability of this testimony, and whether the witness understood what he was saying, the prosecution tried to bolster its case, with the following tragicomic result. (The prosecutor is H. the court interpreter R.)

District Attorney: Do you understand Spanish well?
Witness: No.
DA: What is the word you know in Spanish for stabbing?
Interpreter: May I ask how I can ask him without giving the word?
DA: Okay. Let me rephrase the question.
DA (to W): What word do you use to say how the knife went into the man's body?
I: In what language?
DA: In Spanish.
W: I call it knife.
DA: How do you describe a knife being stabbed into someone hard?
I: I don't know if you want it in Spanish or English?
DA: In Spanish.
W: I don't know.
DA: You don't know the word to describe that in Spanish?
W: I don't understand much.
DA: What language do you usually speak?
W: In my village, only Mestica.
DA: Is it different very much from Spanish?
W: Yes. [*Clackamas County (Oregon) vs. Morales*, 1110–1111]

The DA persisted in this line of questioning, later trying to induce the witness to say "a word in your language, Mestica, which describes the manner in which the man was hit with the knife" and then asking him to "spell it in Spanish, if you can" (*Clackamas County [Oregon] vs. Morales*, 1153).

District Attorney: Can you tell us how to write the word so we can see it?
W: In Mestica?
DA: Yes, can you?
W: No. No, I do not know how to write.
DA: If I gave you a piece of paper, could you write it?
W: Yes. [*Clackamas County (Oregon) vs. Morales*, 1154]

Needless to say, this insistent interrogation produced no orthographic results, since the witness was indeed illiterate or at least unable to write Mixtec. The prosecutor made one last try to elicit from his witness an expression that fit the scenario he was trying to paint for the jury: that of the defendant intentionally stabbing the victim with force.

District Attorney: P-i-c-a-e-r, is the Spanish verb that you've been using to try and describe what you saw?
Witness: Yes.
DA: Is that word not very accurate to describe what you saw?
W: Uh, Uh.
DA: Do you know any other words which describe it better in Spanish.
W: I do not know more.
DA: Why don't you try to do it, to say that other word?
W: I cannot talk. [*Clackamas County (Oregon) vs. Morales*, 1115][9]

I am hoping that the "verbatim" theory in the criminal trial of Santiago V. will lead the reader to ask what sort of "language rights" might derive from such a theory of language. One answer surely would be rights to "translation," for speakers of nonstandard or nonauthorized languages.[10] In Oregon such rights are guaranteed by legislation, although with a significant twist. In an early motion to suppress some of the defendant's statements, defense counsel cites Oregon Statute ORS 133.515, which provides for official translation of languages other than English, in the following terms:

> The terms of that statute . . . direct that when a person is a handicapped person, any handicapped person, and a person who doesn't speak English and cannot communicate in English, is defined in that statute as a handicapped person, and an interpreter shall be appointed to assist that individual. [*Clackamas County (Oregon) vs. Morales*, 628]

Non-English speakers, in other words, suffer from an inability to put their words into the appropriately transparent medium (English words). They are "handicapped." Under the law, at least, a linguistic handicap can be adequately addressed simply by supplying the requisite officially approved translations.

Notice that these notions of translation and "handicap" reflect two corollaries to the "verbatim" theory that characterizes U.S. legal ideologies of language. First is the idea that languages are always in principle translatable, at least into English, which thus becomes a maximally unmarked and neutral vehicle of propositional communication, that is, for conveying the essential propositional "content" of what is said. This is part of what Silverstein identifies as the "displacement" of the problem of language "onto the plane of word reference-and-predication" (1986:3). English here acts as a "standard language" that is for these purposes completely transparent. Second, English is also somehow in the repertoire of skills of a "standard person," one who is socially and, perhaps, morally whole or "normal." Speaking English in part defines how a person shows him or herself not to be handicapped.

The trial of Santiago V., in which I participated as a "linguistic expert" in a postconviction defense effort, brought home to me the relevance of theoretical attention

15481433, 2003, 4, Downloaded from https://anthrosource.onlinelibrary.wiley.com/doi/10.1525/aa.2003.105.4.764 by Stanford University, Wiley Online Library on [01/12/2024]. See the Terms and Conditions (https://onlinelibrary.wiley.com/terms-and-conditions) on Wiley Online Library for rules of use; OA articles are governed by the applicable Creative Commons License

to linguistic ideologies to quite immediate, practical matters, in this case, trying to get an innocent man (and he was innocent)[11] out of prison. Linguistic theory and scientific ideologies of language turn considerably less academic when one faces circumstances like the Clackamas County murder trial. Here a bankrupt or at least partially flawed theory of language does not merely offend our intellectual sensibilities but also helps put a 17-year-old Indian youth from Oaxaca in an Oregon prison for the rest of his life. The supposition that facts can be transparently related, without regard for the linguistic medium in which they were allegedly couched, appeared in analysis of the transcript and in conversation with repentant jurors about how the guilty verdict was reached. Indeed, the fact that most of the witnesses had poor command of Spanish and none of English seems to have been deliberately downplayed by both sides of the case, and the fact that Santiago himself did not speak at the trial was taken as a deliberate sign of his silence before the facts presented, rather than evidence for his silencing by the practices of the court, an issue to which I return in the conclusions below. "Ideas about language" here had subtle but definitive practical consequences. Subsequent "expert testimony" work in the United States, in Australia, and in southeastern Mexico has underscored this coalescence of theory and practice.

LANGUAGE POLICY AT THE "WHOLE EARTH" NURSING HOME

U.S. law, like other legal traditions, incorporates linguistic ideologies outside the practices of the courtroom itself. Let me describe another legal case in which I have been involved, to give a feeling for both the issues that arise and part of their anthropological interest.

Consider civil law. Is "free speech," for example, a "language right"? I have recently worked as "expert witness" for the plaintiffs in a civil discrimination suit brought by four "Hispanic" women against their employer—which I will call the "Whole Earth" nursing home—who dismissed them because they spoke Spanish on the job. As I was surprised to learn, however, the legal issues are convoluted. Statutory protection is provided against discrimination on the basis of "race, color, religion, sex or national origin" (sections 703[a][1] and [2] of Title 7). However, no explicit protection is guaranteed, for example, when discrimination is based solely on language. Title 7 does not provide a "right" to speak a particular language, and even deliberate and explicit language discrimination per se is thus not a violation of civil rights under the law. The plaintiffs in this case were therefore obliged to argue that: (1) their use of Spanish was an integral part of their "national origins" as specified by Title 7 (despite the fact that they came from different Latin American countries, and one woman was, in fact, "born in East LA"); and (2) that being prevented from speaking Spanish at work therefore had the potential for causing harm to their identities under such a rubric.

I will develop just one aspect of the case. Oregon has at least one relevant English-only law on the books. Let me quote from the motion for partial summary judgment.[12] Plaintiffs were subject to state regulations pertaining to residential care facilities. Specifically, O.A.R. 411-055-0051(3) provided in material part:

> (3) Qualifications of Staff Giving Direct Care. All direct care staff shall meet the following criteria: . . . Be literate and capable of understanding written and oral orders; communicate in English with residents, physicians, case managers, and appropriate others; and be able to respond appropriately to emergency situations at all times.

This provision governs all residential care facilities in the state and stipulates that the patients cared for in such facilities, a majority if whom will presumably be English speakers, can expect their caregivers to speak only English with them.

The "Whole Earth" nursing home in this case claimed to have an institutional language policy that went somewhat beyond the Oregon statute, prohibiting employees from using any language other than English anywhere in the facility except for the "break room" where employees had meals and relaxed when off duty.

> [Whole Earth] justifies its alleged English-only-in-common-areas policy as an "interpretation" of O.A.R. 411-055-0051(3) . . . [Whole Earth] also justifies its policy by reference to "other concerns" . . . [Whole Earth] contends that residents with dementia or other cognitive dysfunctions may have their conditions "exacerbated by confusing communications." . . . More generally, [Whole Earth] contends that "many residents find communications that they do not understand to be upsetting because they fear they are being "talked about" or simply believe that, as a matter of courtesy, they are entitled to understand what is being said within their hearing" . . . [Whole Earth] further justifies its language policy on the ground that residents and family members complained "on a regular basis" about staff speaking Spanish at the . . . facility. [personal communication with author, see note 10]

Whatever we may think about it on logical, moral, or political grounds, the underlying theory of language here is more sophisticated than the "verbatim" theory implicit in the murder trial. It explicitly acknowledges the social embeddedness of talk, if only in the somewhat backhanded way that it anticipates potential negative impacts of using nonstandard, unintelligible language in a social situation. That is, the statute and the specific language policy goes beyond merely trying to guarantee the transparency of language practices in the health care facility, making sure that people communicate in a manner intelligible to all. There is a further consequence, a political loading to the use of non-English as threatening, insulting, and—much like its speakers themselves—insubordinate. The policy conjures the vision of nonstandard language as secret and, therefore, implicitly menacing.

In the depositions of the "Whole Earth" supervisors who locked the Spanish-speaking employees out of the residential care facility on the night in question, it is apparent that they saw the employees' use of Spanish in

15481433, 2003, 4, Downloaded from https://anthrosource.onlinelibrary.wiley.com/doi/10.1525/aa.2003.105.4.764 by Stanford University, Wiley Online Library on [01/12/2024]. See the Terms and Conditions (https://onlinelibrary.wiley.com/terms-and-conditions) on Wiley Online Library for rules of use; OA articles are governed by the applicable Creative Commons License

15481433, 2003, 4, Downloaded from https://anthrosource.onlinelibrary.wiley.com/doi/10.1525/aa.2003.105.4.764 by Stanford University, Wiley Online Library on [01/12/2024]. See the Terms and Conditions (https://onlinelibrary.wiley.com/terms-and-conditions) on Wiley Online Library for rules of use; OA articles are governed by the applicable Creative Commons License

their presence (and not simply in front of residents) as clear and intentional insubordination. One supervisor, for example, considered enforcement of the English-only policy to be part of her job: "If they were speaking any language other than English, then I was able to tell them not to speak that language" (AV, p. 14). When asked how she felt on the evening of the dismissal, she remarked: "All the other coworkers were just speaking Spanish, I mean, amongst themselves, throughout the facility, and . . . [i]t was just very frustrating that I couldn't do anything about it (AV, pp. 70–71). The resident director of the facility, speaking about one of the Hispanic plaintiffs in the suit, called her a "very insubordinate employee because of the language she spoke in areas that were not appropriate" (DS, p. 47). In answer to questions she elaborated: "The word insubordinate means being rude and disrespectful. And speaking languages [*sic*], when being counseled about doing that, was insubordinate" (DS, p. 47).

This supervisor's understanding of the rationale for the English-only policy at Whole Earth suggests another ideological principle, which I will dub "linguistic paranoia":

> Because there were multiple nationalities at [Whole Earth] that worked together; that if one couldn't understand the other it caused a lot of feelings of insecurity and could cause people feeling they were being harassed by not knowing what was being stated. [DS, pp. 52–53]

"Linguistic paranoia" is the presumption that when copresent persons use a language you cannot understand, it can only be because they are saying something they do not want you to understand, probably because whatever is being said is "against" you.

The same sort of sentiment, displaced from coworkers onto the residents of the home, is echoed by the "Whole Earth" swing shift supervisor:

> We have residents who are very self-conscious about themselves, that anything that is out of—that is not familiar to them will frighten them and they start thinking that people are talking to them—talking about them right in front of them. . . . There have been people who have heard people say things—employees say things in different languages about their family members. So they just ask for everybody to speak English in the common areas, because that's the residents' home, it's not our home. [ER, p. 35]

This supervisor also reports that speaking Spanish in front of other workers was taken as a kind of intentional discourtesy: "When they would go up to them and ask them, that they would completely ignore them and talk to the other caregivers in Spanish" (ER, pp. 64–65).

The central preoccupation of the supervisory staff that dismissed the Hispanic employees is further underscored by the following passage from the handwritten statement of AV, wherein she describes an evening when she felt tension with her Spanish-speaking coworkers:

> [C.] and I were walking through the kitchen and were stared at by several co-workers in the kitchen. So we continued to walk through the kitchen to go outside and discuss what has been going on all evening. As we left the kitchen through the back door we heard continuous laughing followed by the Spanish language followed by more laughing. We both decided that we were being treated unfairly and I called our supervisor. [statement of AV, p. 3]

The suit brought by the Hispanic employees against "Whole Earth" Nursing home has, at the time of writing, not yet been resolved by the courts, although various attempts for summary judgment and dismissal have been refused so that the case may ultimately come before a jury. According to the plaintiffs' lawyers, the legal questions at issue have to do with whether the "English-only" policy was sufficiently clear and explicit, and whether its enforcement was by nature discriminatory. There is also a substantive issue about the nature of damage or harm suffered by the plaintiffs as a result of "Whole Earth's" actions. However, there seems little doubt that a language policy of the sort "Whole Earth" claims to have had is consistent with the dominant language ideology of the law.

Indeed, there is significant precedent in the law for an "English-only on the shop floor" policy, specifically a much cited U.S. Court of Appeals Ninth Circuit decision (known as *Garcia vs. Spun Steak Co.*) reversing a lower court's decision in favor of employees who had claimed that a workplace English-only policy violated the antidiscrimination provisions of Title 7. This "Spun Steak" decision reaffirmed the legal basis of English-only rules in the workplace, and it assumes a central place in legal arguments about English-only laws. Without going into details, I will again note two aspects of the underlying linguistic ideology expressed in the Spun Steak decision, which is a matter of public record.

First, consider the apparent rationale that led Spun Steak to implement its English-only policy in the first place. I quote from the preamble in the case:

> Prior to September 1990, [Spanish speaking] Spun Steak employees spoke Spanish freely to their co-workers during work hours. After receiving complaints that some workers were using their bilingual capabilities to harass and to insult other workers in a language they could not understand, Spun Steak began to investigate the possibility of requiring its employees to speak only English in the workplace. Specifically, Spun Steak received complaints that Garcia and Buitrago made derogatory, racist comments in Spanish about two co-workers, one of whom is African-American and the other Chinese-American.
>
> The company's president . . . concluded that an English-only rule would promote racial harmony in the workplace. In addition, he conclude that the English-only rule would enhance worker safety because some employees who did not understand Spanish claimed that the use of Spanish distracted them while they were operating machinery, and would enhance product quality because the U.S.D.A. inspector in the plant spoke only English and thus could not understand if a product-related concern was raised in Spanish. [*Garcia vs. Spun Steak Co.*, 4–5]

There is a clear kinship between the underlying view of language implicit in this miniature history and the

"Whole Earth" scenario: The link comes from "referential displacement" and "linguistic paranoia." Notice the chain of logic implied. Departing from a shared "standard" English means that communication is unintelligible, no longer "referentially transparent," and, therefore, dysfunctional and purposeless. Moreover, by virtue of its unintelligibility and consequent uselessness for the work at hand, it is perceived by definition as "harassing" and "insulting." The logic extends to a further step that recalls Judith Irvine and Susan Gal's (2000) observation that linguistic ideologies are recursive and iconically projective: What happens in the plane of linguistic varieties is projected, for example, onto social structures and personal identities. Speaking in non-English is potentially threatening (because it is unintelligible, and, thus, secret); speakers of non-English are therefore also potentially threatening (because they are insubordinate, uncontrollable, and secretive).

A second notable feature of the underlying ideology in the Spun Steak decision has to do with will, intention, and freedom in language "choices." The court argues that an employer has the prerogative to define the privileges available to employees while at work, including, in this case, "the ability to converse" "on the job" *(Garcia vs. Spun Steak Co.,* 8).

> A privilege, however, is by definition given at the employer's discretion; an employer has the right to define its contours. Thus, an employer may allow employees to converse on the job, but only during certain times of the day or during the performance of certain tasks. The employer may proscribe certain topics as inappropriate during working hours or may even forbid the use of certain words, such as profanity. [*Garcia vs. Spun Steak Co.,* 8]

Then, citing another precedent of a related case, the court elaborates a further ideological position about language.

> Here, as is its prerogative, the employer has defined the privilege narrowly. When the privilege is defined at its narrowest (as merely the ability to speak on the job), we cannot conclude that those employees fluent in both English and Spanish are adversely impacted by the policy. Because they are able to speak English, bilingual employees can engage in conversation on the job. It is axiomatic that "the language a person who is multi-lingual elects to speak at a particular time is . . . a matter of choice." . . . The bilingual employee can readily comply with the English-only rule and still enjoy the privilege of speaking on the job. "There is no disparate impact" with respect to a privilege of employment "if the rule is one that the affected employee can readily observe and nonobservance is a matter of individual preference." [*Garcia vs. Spun Steak Co.,* 8–9]

The court goes on to consider the claim, advanced by the Spanish-speaking employees in this case, that "for them, switching from one language to another is not fully volitional" [*Garcia vs. Spun Steak Co.,* 9]. Acknowledging that there are empirical matters that cannot be resolved in this connection, the court nonetheless concludes that:

> The fact that an employee may have to catch himself or herself from occasionally slipping into Spanish does not impose a burden significant enough to amount to the denial of equal opportunity. . . . The fact that a bilingual employee may, on occasion, unconsciously substitute a Spanish word in place of an English one does not override our conclusion that the bilingual employee can easily comply with the rule. [*Garcia vs. Spun Steak Co.,* 9]

Insofar as language choice is purely a matter of volition, then, violations of an English-only policy must be considered willful acts of disobedience, intentional insubordination, to be read as by their very nature hostile and aggressive. Here is a further ideological principle, already implicit in much of what has gone before, which we might call "linguistic freedom of choice." The notion that people who do not speak English are somehow "handicapped" is already a reflex of the idea that all normal people, in U.S. society, can and should simply learn English. A foundational assumption is, of course, that learning English is something everyone can easily do, regardless of other mediating social and cultural circumstances. Moreover, that anything other than simple propositional communication might be involved in language choice is ideologically denied here: Bilingual speakers "axiomatically" can choose between different linguistic codes without communicative loss. "Referential transparency" rears its ugly head again, in the image of "unconsciously slipping" from one language to another, or substituting one language's word for another's, as though the word, or code, is merely an exotic costume for a shared meaning.

LEGAL LANGUAGE IDEOLOGIES FARTHER AFIELD AND CLOSE TO HOME

Linguistic paranoia is not limited to Anglo nursing-home patients or supervisors. I have heard Tzotzil Indians in Chiapas, Mexico, suggest that visiting tourists who talk in their unintelligible gibberish are surely cursing or ridiculing them (and they feel entitled to return the favor). Moreover, there are striking parallels between the "Whole Earth" case and judicial decisions elsewhere in the English-speaking world where an employer's right to limit language choices in the workplace has been reaffirmed.[13]

It would be possible to pursue a comparative enterprise here and to visit other legal traditions and their views of language. For example, an Australian Land Tribunal was set up to resolve Aboriginal claims to land under recently enacted "Native Title" provisions. Its deliberations routinely involve "anthropological expertise." Nonetheless, its cases frequently pit a Western legal linguistic ideology that links languages to tribes, and by extension to territories, against an Aboriginal theory that ties language instead to "ownership" (not, incidentally, to speaking knowledge) and thence to territory somewhat differently conceived (Haviland 1997). Similarly, the legal wrangling surrounding the trials of those accused of the infamous 1997 massacre of women and children at Acteal in highland Chiapas, Mexico, manages—by a process related to what Irvine and Gal call "erasure"—to render invisible the presence of Indian languages in the entire legal process (Haviland 1999). In the U.S. cases presented, the non-English linguistic varieties are projected as discrete, in some

15481433, 2003, 4, Downloaded from https://anthrosource.onlinelibrary.wiley.com/doi/10.1525/aa.2003.105.4.764 by Stanford University, Wiley Online Library on [01/12/2024]. See the Terms and Conditions (https://onlinelibrary.wiley.com/terms-and-conditions) on Wiley Online Library for rules of use; OA articles are governed by the applicable Creative Commons License

ways monolithic, if unintelligible, and above all irrelevant to the dominant and regimenting institutions of the law, which are called on to resolve the cases, in some sense *despite the inconvenience of linguistic and cultural differences*. In the Acteal trials (which only began in earnest nearly two years after the roughly one hundred people accused of the crimes had been incarcerated) Indian languages were simply not present. Linguistic and cultural differences between the protagonists of the drama—the victims and their assassins—and the actors in the Mexican legal system, as well as differences within the relevant Indian community, which bitterly divided among traditionalists, Catholics, and evangelical Protestants, faded into oblivion behind the shocked, globalized consciousness of the enormity of the massacre.

I will not try to develop these comparative materials here. Instead let me conclude by considering briefly how linguistic ideologies, even incompletely articulated doctrines like those I have detected in the practices of some U.S. courts, give rise to specific policies—especially to notions of "language rights" that reflect the underlying ideological assumptions.

In the Clackamas County murder trial, we saw a conception of language based on the "Verbatim theory," with a consequence that the only "rights" of speakers of non-English are rights to translation, to help them overcome their non-English "handicap." The standards for such translation, and the limited abilities of the legal system to provide it, remain matters for legislation and the scrutiny of "experts." In the "Whole Earth" case, in which an employer may assume an attitude of "language paranoia," it is, ironically, the rights of the English-only speakers that are presumed to be infringed upon by speakers of non-English. The remedy here is to institute English-only policies to block those competent in unintelligible forms of speech from oppressing monolinguals with their suspect communications, and to train them to be voluntary (if irremediably bi- or multilingual) English speakers.

I offer one final argument and an ironic conclusion. Since I have repeatedly been invited by lawyers, who are always ready to try any desperate tactic when they know they are likely to lose a case, to display my own "expertise" about language in court, it might be supposed I would have insight about how anthropological "language ideologies" that grow out of our own "higher order" theorizing about language in society enter into the social dynamic I have sketched. I wish I could issue a triumphal cry for linguistic anthropology as an antidote to bad theories of language. I also wish I could offer a hopeful prognosis for "linguistic anthropological activists" who might dream of turning theory into practice, or at least of influencing practice by spouting theory. But I cannot.

An initial source of disillusionment is that courts seem quite happy with their own theories of language. It is routinely argued that the "Miranda Rights" read to criminal suspects from a multilingual card have been adequately administered if the suspect simply acknowledges "understanding" them, and tape recordings are frequently made of this assent to present in court; this is a practical enforcement of referential transparency (see de León 1999). In the "Spun Steak" case, a Stanford sociolinguist hired as an expert witness argued in her deposition several points familiar to anthropological linguistics: Language is much more than a transparent referential vehicle; it is also a central badge of "identity" (including, presumably, "racial" or "national origin" identities of the sort protected under antidiscrimination law). She also raised questions about the alleged ability of bilinguals to switch "voluntarily" between different languages or language varieties. The court noted but rejected her arguments, asserting by judicial fiat that "by definition" bilinguals can voluntarily choose which language to use in relevant circumstances. In the "Whole Earth" case, I suggested that people sometimes build and maintain their social relationships through a delicate calculus of linguistically mediated etiquette, so that interfering with the latter inevitably distorts the former. The lawyers in the case were reluctant to launch such a convoluted sort of argument, asserting that there were limits to how much "education" judges could absorb.

Another source of disillusionment for the anthropological expert witness comes from the process of compromise, central to U.S. law. One is repeatedly put into an uncomfortable and ambivalent role as both scientist and advocate. One is "hired" as an "expert" for a particular cause; one must, therefore, suppress those aspects of what one discovers (or knows already) as a "scientist" for the purposes of relevant expertise. And if the expert does not suppress these aspects, he or she can be sure that the lawyers will. The process of transforming an expert's oral deposition, styled perhaps after a classroom presentation or a theoretical lecture with presumed intellectual subtleties and academic standards of evidence, into a turgid, determinedly heavy-handed, and dogmatic written document that lawyers are willing to submit in evidence, is an exercise in practical linguistic manipulation that deserves a study in itself.

A final source of disillusionment comes from outcomes. There is something inherently self-defeating about trying to oppose an ideology while working within its confines, and this is the nature of Western, if not all, judicial processes. A postscript about Santiago's case illustrates the problem. His ultimate release after five years in jail was based not in the least on the theory-laden analysis and critical deconstruction of the linguistic flaws in the investigation and trial. Rather, it was based on a technicality. His lawyers persuaded the court of appeals that he had been incompetently defended, since his lawyer had refused to allow him to testify in his own defense. Of course, as I hinted above, there is an aspect of linguistic ideology implicit in this argument as well: Santiago's "referential" silence in court was taken as self-condemning noncontestation. In the end, the case was resolved by default. The state, obliged to bring the case to a new jury, simply chose not to reprosecute.

15481433, 2003, 4, Downloaded from https://anthrosource.onlinelibrary.wiley.com/doi/10.1525/aa.2003.105.4.764 by Stanford University, Wiley Online Library on [01/12/2024]. See the Terms and Conditions (https://onlinelibrary.wiley.com/terms-and-conditions) on Wiley Online Library for rules of use; OA articles are governed by the applicable Creative Commons License

Ironically, it is the transformation of Santiago's linguistic repertoires that has also transformed his life. Santiago vastly improved his Spanish and became fluent in English while in prison and went on to finish a four-year B.A. program in social work at the University of Portland. He has since been a union organizer, a civil authority in his home village in Oaxaca, an employee of various state and private agencies offering services to migrant workers, and, most ironic of all, a frequent court translator for other Mixtecs, helping to perpetuate the linguistic ideologies that helped land him in jail in the first place.

JOHN B. HAVILAND Department of Linguistics, Reed College, Portland, OR 97202

NOTES

Acknowledgments. The original research on which the first half of this article was based was jointly carried out with Lourdes de León, to whom I am grateful for shared ideas and insights. Donna and Jerry Slepack were central to our initial interest in the first case described, and Santiago V. himself has been a major inspiration and an important friend. Members of the Text and Power group at the Center for Psychosocial Studies and David Laitin inspired work on earlier versions of some of this material. The original draft of this article was prepared for the invited session "Current Issues in Anthropology, Five Fields Update" (Society for Anthropology in Community Colleges, AAA, Washington, D.C., November 29, 2001). I am indebted to that society for their invitation to present it and to Sally McLendon for encouraging me to revise it for the current forum. The editors of this journal, Bill Maurer, and an anonymous reviewer helped remove some (but assuredly and sadly not all) of its defects.

1. See also Silverstein 1987.

2. But, perhaps, through the institution of schooling, see, for example, Collins 1988.

3. See Silverstein 1987 for a detailed articulation.

4. More detailed and somewhat different treatments of this case can be found in Haviland 1988 and de León 1999.

5. Bracketed page references are to the official trial transcript in the case.

6. Although he since returned, several times, to the Oregon strawberry harvest, as did virtually all of the witnesses.

7. Ms. R., the court translator, was a native speaker of Cuban Spanish, itself notably different from the Mexican variety most of the witnesses aspired to.

8. To make reading the transcript segments easier, I have altered the speaker identifications from the original transcript, using the following conventions: J(udge) = the trial judge. D(istrict) A(ttorney) = the prosecuting attorney, sometimes referred to in the text as Mr. H. I(nterpreter) = the official Spanish interpreter, sometimes referred to in the text as Ms. R. W(itness) = the current witness being examined. D(efense) = the lawyer for the defense.

9. The Spanish word was probably *picar* ("sting, stab").

10. As Bourdieu (1982) might have it. Although a 1978 Federal statute calls for certification for court interpreters, such statutes do not necessarily bleed down to lower courts at the state or county level. Moreover, my own observation shows that the practices even of federal courts are rather haphazard, with federal enforcement agencies often relying on defense attorneys to provide certified translators and then only at the time of trial. "Translation" practices during other phases of the judicial process may be even more haphazard. I once testified as expert witness in a case in which Oregon and federal police arrested a man after serving a warrant and later reading the accused his rights using the man's own 13-year-old daughter—the only person present during the search and seizure raid who spoke both Spanish and English—as "translator."

11. Although there is no room to provide full details here, postconviction research by defense investigators, as well as by the author and Lourdes de León aided by others from the accused man's village in Oaxaca, soon revealed the identity of actual knife-wielder. The culprit had, not surprisingly, immediately fled Oregon after the events and gone into hiding first in his village (where he sought shamanistic therapy for his crime) and, later, in Mexico City. As we shall see, such "facts" were, ironically, irrelevant to the outcome of postconviction relief efforts.

12. In this and subsequent quotes from official documents for the case, which is still not legally resolved at the time of writing, I disguise real names, places, and dates.

13. For an Australian case see *The Age,* April 23, 2003, also available at http://www.theage.com.au/articles/2003/04/22/1050777256449.html.

REFERENCES CITED

de León, Lourdes
1999 Sí means yes: Lenguaje y poder en el juicio a un mixteco en la corte norteamericana. *In* Sí means yes: Lenguaje y poder en el juicio a un mixteco en la corte norteamericana. Gabriela Vargas Cetina, ed. Pp. 65–83. Mexico, DF: CIESAS.

Duranti, Alessandro
2001 An Historical Perspective on Contemporary Linguistic Anthropology. Teaching Anthropology SACC Notes 7(2):20–24.

Haviland, John B.
1988 Mixtecs, Migrants, Multilingualism, and Murder. Chicago: Working Papers of the Center for Psycho Social Studies.
1997 Owners vs. Bubu Gujin: Land Rights and Getting the Language Right in Guugu Yimithirr Country. Journal of Linguistic Anthropology 6(2):145–160.

Haviland, John Beard
1999 Lengua, ley, y antropología en Queensland (¿y en Chiapas?). In Mirando . . . ¿Hacia Afuera? Experiencias de investigación. Gabriela Vargas-Cetina, ed. Pp. 141–168. Mexico, DF: CIESAS.

Irvine, Judith T., and Susan Gal
2000 Language Ideology and Linguistic Differentiation. *In* Regimes of Language: Ideologies, Polities, and Identities. Paul V. Kroskrity, ed. Pp. 35–84. Santa Fe, NM: School of American Research Press.

Rumsey, Alan
1990 Wording, Meaning and Linguistic Ideology. American Anthropologist 92(2):346–361.

Silverstein, M.
1985 Language and the Culture of Gender: At the Intersection of Structure, Usage, and Ideology. *In* Semiotic Mediation. E. Mertz and R. Parmentier, eds. Pp. 219–260. New York: Academic Press.

Silverstein, Michael
1987 The Three Faces of "Function": Preliminaries to a Psychology of Language. *In* Social and Functional Approaches to Language and Thought. Maya Hickman, ed. Pp. 17–38. New York: Academic Press.

15481433, 2003, 4, Downloaded from https://anthrosource.onlinelibrary.wiley.com/doi/10.1525/aa.2003.105.4.764 by Stanford University, Wiley Online Library on [01/12/2024]. See the Terms and Conditions (https://onlinelibrary.wiley.com/terms-and-conditions) on Wiley Online Library for rules of use; OA articles are governed by the applicable Creative Commons License